***THE HON'BLE SRI JUSTICE BILAL NAZKI**

THE HON'BLE SRI JUSTICE GODA RAGHURAM

AND

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

+WRIT APPEAL No. 1109 OF 1995

AND

WRIT PETITIONS No. 10537 & 10549 OF 2002

% 24-09-2004

W.A.No.1109 of 1995

The Etikoppakka Cooperative Agricultural and Industrial Society Limited,

Represented by its Secretary, Etikoppaka, Visakhapatnam District.

…Appellant

and

K. Sanyasi and others ….Respondents

Counsel for the appellant:Mr.S.R.Ashok

Counsel for respondents 1 to 41:Mr.M.Adinarayana Raju

Counsel for respondents 42 and 43: G.P.for Cooperation

W.P.No.10537 of 2002

B. Tukaram …Petitioner

And

The Director of Sugar and Cane,Commissioner and another

…Respondents

W.P.No.10549 of 2002

B.Kishan Rao ….Petitioner

And

The Director of Sugar and Cane,Commissioner and another

…Respondents

Counsel for the petitioners:Mr.P.S.Murthy

Counsel for the respondents :G.P.for Industries&Commerce

< Gist:

> Head Note:

? CITATIONS:

1. 1990(2) ALT 1
2. AIR 1986 SC 210
3. AIR 1965 SC 1567

4. AIR 1985 SC 551

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE BILAL NAZKI

THE HON'BLE SRI JUSTICE GODA RAGHURAM

AND

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT APPEAL No. 1109 OF 1995

AND

WRIT PETITIONS No. 10537 & 10549 OF 2002

Writ Appeal No:1109 of 1995:

(Writ Appeal under Clause 15 of the Letters Patent Appeals against the Order dated 11-03-1992 in W.P.No.19632 of 1987 on the file of the High Court.)

Between:

The Etikoppakka Cooperative Agricultural and Industrial Society Limited,

Represented by its Secretary, Etikoppaka, Visakhapatnam District.

…Appellant/Petitioner in W.P.

AND

1. K. Sanyasi.
2. U. Ramana.
3. Danthuluri Jagannadha Raju.
4. Ray Varapu Ramaswamy.

5. Ghikatala Venkataswamy.
6. Kunduru Talupulu.
7. Alla Veeraswamy.
8. Bheemuni Narayana.
9. Sentana Konda.
10. Bheemuni Gangachari.
11. Dasari Mahalaxmi.
12. Alla Appanna.
13. Penapolu Venkanna.
14. Bheemuni Chinna Marimaiah.
15. Javvari Appala Konda.
16. Varre Venkata Ramana.
17. Nookala Narayana.
18. Abdul Sobhan.
19. Md. Mustafha.
20. Polisetti Nookaraju.
21. K. Samudram
22. Datla Ramamurthy.
23. Nailaru Musali.
24. Nailaru Narinaiah.
25. Sarvasiddi Yeraiah.
26. Varee Apparao.
27. Vantreddy Appanna.
28. Petta Appanna.
29. Kante Gangaiah.
30. Madina Shah.
31. Mailaru Poluraju.
32. Abdul Kha Dar.

33. Polisetti Pothaiah.

34. Vinnama Raju Suryanarayana Raju.

35. B.B.A. Appalacharyulu.

36. Shanke Dada.

37. Devoju Satyanarayana.

38. Madagaja Appanna.

39. Bodda Chinakooda.

40. Ch. Nookalu.

41. Shaik Kannasaheb.

(All are residing at Etikoppakka, Visakhapatnam District)

…Respodnents/Petitioners in W.P.

42. The Government of Andhra Pradesh,

Represented by its Secretary, Food and Agriculture (Coop.IV)

Department, Hyderabad.

43. The Director of Sugar and Cane Commission, Hyderabad.

…Respondents/Respondents

Counsel for the Appellant: MR.S.R.ASHOK
Counsel for the Respondents 1 to 41: MR.M.ADINARAYANA RAJU
Counsel for the Respondents 42 and 43: GP FOR COOPERATION

Writ Petition Nos.10537 of 2002:

Between:

B. Tukaram,

S/o B. Shambaiah, aged 58 years, Occ: Clerk, Nizamabad

Cooperative Sugar Factory, R/o Nizamabad.

..... PETITIONER

AND

1. The Director of Sugar and Cane,

   Commissioner, Government of A.P.,

   Exhibition Grounds, Nampally, Hyderabad.

2. The Nizamabad Cooperative Sugar

   Factory Limited, represented by its Managing Director, Nizamabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein this Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing of impugned notice bearing No.NCSF/PD/4004/2002-03, dated 30-04-2002 as arbitrary and illegal and set aside the same and consequently direct the respondents to continue the petitioner in service till the completion of 60 years age with all consequential benefits.

Counsel for the Petitioner: MR.P.S.MURTHY

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

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Writ Petition No.10549 of 2002

B.Kishan Rao, S/o. B.Keshav Rao, Occ:Foreman (Elec),Nizamabad Cooperative Sugar Factory Limited, R/o Sarangapur, Nizamabad District

….Petitioner

A N D

1. The Director of Sugar and Cane,

   Commissioner, Government of A.P.,

   Exhibition Grounds, Nampally, Hyderabad.

2. The Nizamabad Cooperative Sugar

Factory Limited, represented by its Managing Director, Nizamabad.

….Respondents

Counsel for the Petitioner: MR.P.S.MURTHY

Counsel for the Respondents: GP FOR INDUSTRIES & COMMERCE

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The Court delivered the following

COMMON JUDGMENT : (Per Hon'ble Sri Bilal Nazki,J)

These two Writ Petitions and the Writ Appeal raise same question of law and therefore they are being disposed of by the common judgment.

W.P.No.10537 of 2002

The petitioner in this case submitted that he was working as a Clerk in the Co-operative Sugar Factory since 1963. His post belongs to the category of workman but does not belong to supervisory category. He contended that as per the provisions of the Sugar Wage Board recommendations incorporated in the bye-laws of the 2nd respondent, the age of retirement of an employee is 60 years. The Government of Andhra Pradesh issued G.O.Ms.No.396, dated 03.09.1990, wherein it had clarified that the workmen in Co-operative Sugar Factories are entitled to continue in service up to 60 years of age, though the non-workmen are not entitled to that benefit. The 1st respondent also issued proceedings on 13.12.1993 addressed to the 2nd respondent to that effect. Petitioner claims to be a workman and submits that he was entitled to serve up to 60 years of age. The 2nd respondent, without applying his mind, in a routine manner, issued a notice on 30.04.2002, informing the petitioner that he had to retire on 30.06.2002 on attaining the age of 58 years. The respondent No.2 purportedly had issued the notice in pursuance of G.O.Ms.No.396, dated 03.09.1990. It is contended that in terms of the said G.O., the petitioner could not be retired at the age of 58 years, as according to the petitioner, this G.O. says that a workman is entitled to remain in service till he attains the age of 60 years. On this ground alone this Writ Petition was filed.

W.P.No.10549 of 2002

This Writ Petition is also filed on identical grounds. Only there is some difference in the dates. In this case, however, the petitioner is a Foreman and he also belongs to the category of workman.

W.A.No.1109 of 1995

This Writ Appeal is against the order of a learned Single Judge, who allowed

the Writ Petition No.19632 of 1987 on the strength of a Division Bench judgment of this Court in Writ Petition No.17540 of 1988 and batch dated 20.09.1991. When this case came up before a Division Bench on 03.01.2003, the Division Bench noted that the judgment in Writ Petition No.17540 of 1988 and batch needs a reconsideration therefore it referred the matter to the Full Bench.

The respondents have filed almost identical counters. In the counter in Writ Petition No.10537 of 2002, the first ground of resistance to the Writ Petition is that the 2nd respondent is a Society registered under A.P.Co-operative Societies Act (hereinafter referred to as 'the Act') and is not amenable to the Writ Jurisdiction of this Court. The Government does not have deep and pervasive control over the affairs of 2nd respondent as it is not State within the meaning of Article 12 of the Constitution of India. It is also stated that the Writ Petition was liable to be dismissed in view of the fact that in terms of Rule 28(5) of the A.P. Co-operative Societies Rules, 1964 (hereinafter referred to as 'the Rules'), all employees of the Co-operative Societies except the last grade employees, have to retire at the age of 58 years. The Writ Petitioner was working as a Clerk and he was drawing a salary of more than Rs.1,600/- per month. He was exercising supervisory functions and he is not a workman within the meaning of Industrial Disputes Act. G.O.Ms.No.396, dated 03.09.1990 issued by the Government, was applicable to the persons who were in the Last Grade Services as far as the age of superannuation of 60 years was concerned and as far as the workmen were concerned, they would also retire at the age of 60 years only if an agreement was entered into between the Union and the management. The petitioner does not fall in the category of workman. It is further stated that G.O.Ms.No.396 cannot override the provisions of Rule 28(5) of the Statutory Rules and for these reasons, the petitioner could not continue up to the age of 60 years.

Rule 28(5) of the Rules reads as under :

> *"Rule 28(5)(1): Notwithstanding anything contained in the byelaws/special byelaws, service regulations or common cadre regulations of the Cooperative Societies, every paid servant and officer of the Society other than those in the last grade service, shall retire from service on or afternoon of the last date of the month*

on the date he attains the age of 58 years."

Before going to the applicability of Rule 28(5) of the Rules and the bye-laws framed by the Co-operative Societies, to the petitioners, it will be necessary to have a look at some of the provisions of the Act. Section 7 of the Act deals with the Registration of a Society under the Act. The pre-conditions, which must be satisfied before a Registrar provisionally registers a Society and its bye-laws, are laid down in Section 7(1)(a) to (d). Section 7(1)(d) is relevant for the purpose of the present controversy, which lays down that the proposed bye-laws should not be contrary to the provisions of the Act and the Rules.

The petitioners have however, relied on a judgment of a Full Bench of this Court i n *S.K.C.C.Bank Limited Vs. N.Seetharama Raju* and referred to the observations made by the Full Bench. Particular reference is made to para 53, in which summary of conclusions have been given by Justice Jeevan Reddy as his Lordship then was. In Para 53(i), the Court held;

"If a particular co-operative society can be characterized as a 'State' within the meaning of Article l2 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an 'authority' within the meaning, and for the purpose of Art.226 of the Constitution. In such a situation, an order passed by a Society against its employee in violation of the bye-laws, can be corrected by way of a writ petition. This is not because the bye-laws have the force of law, but on the ground that having framed the bye-laws prescribing the service conditions of its employees, the Society must follow them, in the interest of fairness. If it is left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, it would be inherently arbitrary, and may very likely give rise to discriminatory treatment. A society, which is a 'State', has to act in conformity with Article 14 and, for that reason, it will be made to follow the bye-laws."

We have no quarrel with the law laid down by the Full Bench of this Court, but where the bye-laws are not in conformity with the Rules made under the Act, the bye-laws could not be enforced. Even the Full Bench held that the bye-laws do not have the force of law, but it only stated that since the bye-laws prescribe

the service conditions of its employees, the Society should follow them in the interest of fairness and if it was left to the sweet will and pleasure of the Society either to follow or not to follow the bye-laws, that would lead to discriminatory treatment. Admittedly the bye-laws are not enforceable, whereas the Rules have the force of law and in view of the specific provision under Section 7 of the Act, the bye-laws in contravention of the Rules, cannot be enforced. Therefore in our view, no relief could be granted to the petitioners on the strength of the bye-laws.

Now the only question, which remains is regarding the interpretation to Rule 28(5) of the Act.

The second contention of the petitioners is that Rule 28(5) of the Rules has already been struck down by a judgment of this Court in Writ Petition No.17549 of 1988 and batch. We have gone through the judgment. That is not correct. The Division Bench only said,

> *"Since the benefits of G.O.Ms.No.396, dt.3.9.90 is to be given to the petitioners also who have been retired at the age of 58 years only due to the fact that the provisions of the said G.O., are given prospective effect, we are of the view that these writ petitions should be allowed and the age of retirement of the petitioners should also be deemed to be 60 years as provided in G.O.Ms.No.396, dt.3.9.90."*

As a matter of fact, the Division Bench relied on G.O.Ms.No.396, dated 03.09.1990, which is the amendment to Rule 28(5) of the Rules and it did not struck down the Rule as such. Therefore, this contention also has to fail.

The third contention is that the petitioners are workmen within the meaning of Industrial Disputes Act, therefore they have to be treated as such. This argument is without any basis because Rule 28(5)(1) of the Act does not make any distinction between workmen and non-workmen. It creates a distinction between Last Grade Servants and other paid Servant-Officer of the Society. Admittedly the petitioners are not in the Last Grade Service. The Rule has been made notwithstanding anything contained in the bye-laws, special bye-laws, service regulations or common cadre regulations of the Co-operative Societies. Therefore, the Rule applies to the petitioners with its full force and they have to

retire at the age of 58 years.

Lastly it was contended that the reduction of age from 60 to 58 years was bad, as was held also by the earlier Division Bench judgment on the strength of the judgment reported in *B.Prabhakar Rao & others Vs. State of Andhra Pradesh and others*. Therefore, a reference to that judgment will have to be given. This judgment was passed by the Hon'ble Supreme Court in the following factual matrix;

In February 1983, the Government of Andhra Pradesh decided to reduce the age of superannuation of its employees from 58 to 55 years. The Government also issued directions to local authorities and public Corporations to do likewise. As a matter of fact, the age of superannuation had all along been 55 years till the year 1979 in Andhra Pradesh when it raised the age of superannuation to 58 years. But in February 1983, the Government decided to reduce the age of superannuation. In order to give effect to such direction, the Government amended Rule 56(a) of the Fundamental Rules and Rule 231 of the Hyderabad Civil Services Rules by substituting the figure '55' for the figure '58' and by making a special provision that those who had already attained the age of 55 years and were continuing in service beyond that age on 08.02.1983 shall retire from service on the afternoon of 28.02.1983. This was followed by the promulgation of the Andhra Pradesh Ordinance No.5 of 1983. Clause 10 of the Ordinance provided that 'every Government employee, not being a workman and not belonging to Last Grade Service shall retire from service in the afternoon of the last day of the month in which he attains the age of fifty-five years.' In the case of Government employees belonging to the Last Grade Service, it was provided that they shall retire from service on the afternoon of the last day of the month in which they attain the age of sixty-years. The Ordinance then took the shape of an Act and many teachers, workers and employees filed Writ Petitions in the High Court, challenging the Ordinance and subsequently the Act reducing the age from 58 to 55 years. The case finally came before the Supreme Court. The judgment was pronounced on January 18th, 1985, which is reported in AIR 1985 SC 551 (K.Nagaraj & others Vs. State of Andhra Pradesh & another). The provisions were upheld and all the Writ Petitions were dismissed. So, the action of the Government in reducing the age from 58 to 55 years, was upheld by the Supreme Court. However, in the State,

there were agitations, which led to an agreement. Once more the State amended the provisions of law, raising the age of superannuation. After the agitation which was started by the employees, an agreement came into being between the agitating employees and the Government. On August 23rd, 1984, the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act No.23 of 1984 was amended by the promulgation of Andhra Pradesh Ordinance No.24 of 1984 providing that the words 'fifty-eight years' shall be substituted for the words 'fifty-five years'.

So, the age of superannuation remained 55 years from 08.02.1983 till August 23rd, 1984. There was no dispute with regard to the persons, who continued in service from 08.02.1983 till 23.08.1984, but dispute arose with regard to those persons who retired between 08.02.1983 and 23.08.1984 on attaining the age of 55 years. We have given the facts somewhat in detail only to show that there is no similarity between the case at hand and the case that was decided by the Supreme Court. It is true that the age of superannuation for servants of the Co-operative Societies was also 58 years earlier, then it was reduced to 55 years. Then in terms of G.O.Ms.No.396, dated 03.09.1990, it was again increased to 58 years. Since the Government of Andhra Pradesh had reduced the age from 58 to 55 years then again reversed the decision and in between this interregnum, many persons had retired, Supreme Court passed the judgment under reference. We do not find any similarity between the petitioners before this Court and petitioners before the Supreme Court in that case.

Another contention, which found favour in the earlier Division Bench judgment was that Rule 28(5) of the Rules, was retrospective and hence it was bad. We have quoted the rule hereinabove. We do not find any retrospectivity in the rule. The contention of the petitioners is that since they were recruited much before the rule came into force, therefore the Rule could not be applied to them. Rule could be applied only to those persons, who were recruited after Rule 28(5) came into force. Such a contention has already been considered by a Constitutional Bench of the Supreme Court in a judgment in *Bishun Narain Misra Vs. The State of Uttar Pradesh & others*. In para 6, the Court held;

> *"The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we*

read the rule we do not find any retrospectivity in it. All that the rule provides is that from the date it comes into force the age of retirement would be 55 years. It would, therefore, apply from that date to all Government servants, even though they may have been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all Government servants even though they were recruited before 1957."

In a judgment reported in *K.Nagaraj and others Vs. State of Andhra Pradesh & another*, of which we have already given reference while mentioning the judgment reported in 1986 SC 210 (2 supra), the Supreme Court upheld the power of the Government to reduce the age of superannuation. In para 28 it held;

"On the basis of this date, it is difficult to hold that in reducing the age of retirement from 58 to 55, the State Government or the Legislature acted arbitrarily or irrationally. There are precedents within our country itself for fixing the retirement age at 55 or for reducing it from 58 to 55. Either the one or the other of these two stages is regarded generally as acceptable, depending upon the employment policy of the Government of the day. It is not possible to lay down an inflexible rule that 58 years is a reasonable age for retirement and 55 is not. If the policy adopted for the time being by the Government or the legislature is shown to violate recognized norms of employment planning, it would be possible to say that the policy is irrational since, in that event, it would not bear reasonable nexus with the object which it seeks to achieve. But such is not the case here. The reports of the various Commissions, from which we have extracted relevant portions, show that the creation of new avenues of employment for the youth is an integral part of any policy governing the fixation of retirement age. Since the impugned policy is actuated and influenced predominantly by that consideration, it cannot be struck down as arbitrary or irrational. We would only like to add that the question of age of retirement should always be examined by the Government with more than ordinary care, more than the State Government has bestowed upon it in this case. The fixation of age of retirement has minute and multifarious dimensions which shape the lives of citizens. Therefore, it is vital from the point of view of their well-being that the question should be considered with the greatest objectivity and decided upon the basis of empirical data furnished by scientific investigation. What is vital for the welfare of the citizens is, of necessity, vital for the survival of the State. Care must also be taken to ensure that the

statistics are not perverted to serve a malevolent purpose."

For these reasons, we hold that W.P.NOs.17540 of 1988 and batch were not correctly decided and petitioners have no right to continue in service beyond 58 years of age.

In the result, Writ Appeal No.1109 of 1995 is allowed and the order of the learned Single Judge is quashed. Writ Petitions No.10537 and 10549 of 2002 are dismissed. In the circumstances of the cases, no costs.

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(BILAL NAZKI, J)

24-09-2004

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(GODA RAGHURAM, J)

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(GOPALA KRISHNA TAMADA, J)

N.B:

L.R.Copies to be marked.

(B/o)

ajr

One fair copy to the Hon'ble Mr Justice Bilal Nazki

(for his lordships kind perusal)

One fair copy to the Hon'ble Mr Justice Goda Raghuram

(for his lordships kind perusal)

One fair copy to the Hon'ble Mr.Justice Gopala Krishna Tamada

(for his lordships kind perusal)

To

1. The Secretary, Government of Andhra Pradesh,

Food and Agriculture (Coop.IV) Department, Hyderabad.

2. The Director of Sugar and Cane Commissioner, Hyderabad.
3. The Managing Director, Nizamabad Cooperative Sugar

Factory Limited, Nizamabad.

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A.P., Hyderabad. (OUT)

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